

implicit finding that the invention claimed herein is novel in accordance with the Patent Laws.

Claim Objections

Claims 38, 47, and 54 have been objected to as needing semicolons at the end of each step. This has been done in the new claims — 55-71 — presented here.

§ 103 Rejection

Claims 38 - 54 have been rejected under § 103 based on Bloomberg et al (U.S. 5,642,279; "Bloomberg") in view of Walker et al (U.S. 6,249,772; "Walker"). Applicant respectfully traverses this rejection.

The claims under consideration here are directed to methods and systems in which a consumer's account is credited with a refund amount based on a price differential between a price paid in a consummated sale and a price that goes into effect later in time following the consummated sale. The consumer does nothing to obtain the refund and no check is produced and mailed to the consumer. Applicant asserts that no cited art discloses the claimed system and method; there is no teaching or suggestion in the art to credit a consumer's account with a refund as claimed; and there is no motivation in the art to effect the subject matter now claimed herein.

Missing Element

Neither Walker nor Bloomberg provides an element of what is now claimed herein — crediting a consumer account with a refund amount based on a future after-sale lower price. In the Office Action, Page 4, it is admitted that "Bloomberg does not specifically teach crediting an account of the consumer." Applicant notes that Bloomberg does not teach crediting an account with a refund based on prices that go

into effect in the future.

Applicant notes that the concept of a consumer account does not appear in and is nowhere suggested in Bloomberg. Throughout Bloomberg the focus is on producing and mailing a printed check to a consumer and this is required by every claim in Bloomberg. In discussing the storage in a computer regarding information about a transaction and about a consumer (Bloomberg, Col. 1, lines 65-67; Col. 2, lines 1-6), there is no mention or suggestion of any account — either of the consumer or of the retailer.

As previously demonstrated in this application, Walker does not remedy the deficiencies of Bloomberg. Applicant incorporates here by reference the previously filed Responses to Office Actions and Appeal Brief in this application (and will provide for the Examiner's convenience additional copies of them to the Examiner if they are needed). Walker deals only with pre-sale prices and prices at the time of sale. Walker has nothing to do with, and no suggestion regarding, prices that may come into effect in the future following the consummation of a sales transaction. In Walker's system, if a price at a time of sale is lower than a previous already established price, the system is not activated - the consumer will not pay the pre-established price and will avail himself or herself of the lower price at the time of sale. Walker does not teach or suggest crediting a consumer account with a refund amount based on a future lower post-sale price. Without this element in the teachings or suggestions of the prior art, no combination can be made that renders obvious what is now claimed herein.

Applicant believes that both cited references are deficient as discussed above. Even if this were not so (which is denied), Applicant believes there is no motivation to combine teachings from these references. Walker is limited to prices in effect before or at the time a sale is consummated — it has nothing to do with and no teaching or suggestion about prices that go into effect following consummation of a sale. Bloomberg has nothing to do with pre-sale pre-established prices. Walker, in certain aspects, deals with an account of a consumer, but Bloomberg has nothing to do with an account. Bloomberg has nothing to do with a price that is pre-set or

established prior to a sales transaction — but this is what Walker is limited to.

The Office Action states "Walker teaches system providing the refund by crediting an account of the consumer (Col. 22, lines 17-33) (Page 4, Office Action). Applicant disagrees with this characterization of the teachings of Walker. The cited portion of Walker does not mention a "refund" and Walker has nothing to do with refunds in any way and has no teachings or suggestions regarding refunds. This is not surprising since Walker deals with pre-sales and sales prices and not with post-sales prices and future refunds based on them.

§ 101 Rejections

Claims 47 - 54 have been rejected under § 101 as non-statutory on the basis that the claims are not in the technological or useful arts and the claims do not affect or define the technology. Applicant respectfully traverses this rejection. New Claims 64 - 71 correspond to now-cancelled claims 47 - 54.

Claims 64 - 71 recite a system with various "means for" accomplishing various functions, e.g., as do Claims 13 - 19 in the Bloomberg reference. The Court of Appeals for the Federal Circuit has made it clear that business systems are patentable subject matter under § 101:

"Any historical distinctions between a method of 'doing' business and the means of carrying it out blur in the complexity of modern business systems. *See Paine, Webber, Jackson & Curtis v. Merrill Lynch*, 564 F. Supp. 1358, 218 USPQ 212 (D. Del. 1983) (holding a computerized system of cash management was held to be statutory subject matter.)." [*State Street Bank & Trust Co. v. Signature Financial Group, Inc.*, 149 F.3d 1368, 47 USPQ2d 1596 (Fed. Cir. 1998)]

The existence of Class 705 in the U.S. PTO's classification system and of

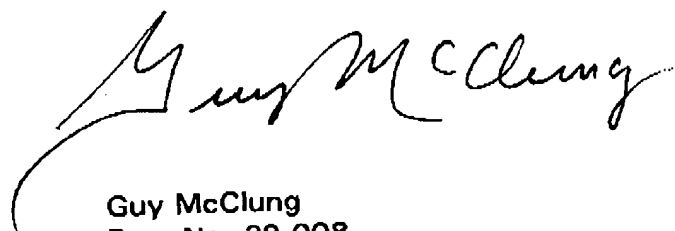
subclasses for Class 705 such as those listed on the Walker reference indicate that what is now claimed herein is in the technological and useful arts.

Conclusion

Applicant believes that the dependent claims presented here also define novel and nonobvious subject matter patentable in addition to that recited in the new independent claims presented here and Applicant does not acquiesce in the rejection of those claims.

Applicant appreciates the careful and detailed Office Action. This is intended to be a complete Response to the Office Action. Early and favorable reconsideration is respectfully requested.

Respectfully submitted,

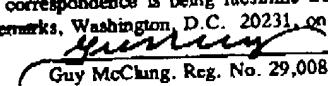


Guy McClung
Reg. No. 29,008

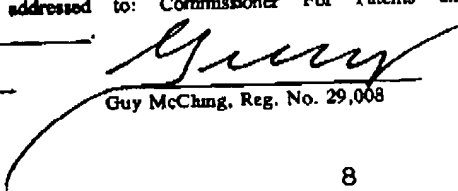
Date: 26 FEB 2003

PMB 347
16690 Champion Forest Drive
Spring, TX. 77379--7023; Phone: 281 893 5244

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to Phone No. 703 872 9326 to Examiner Alvarez to:
Commissioner For Patents and Trademarks, Washington, D.C. 20231, on 26 Feb 03
Date: 26 Feb 03 
Guy McClung, Reg. No. 29,008

CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)

I hereby certify that this correspondence is being deposited with sufficient postage as first class U.S. mail with the United States Postal Service in an envelope addressed to: Commissioner For Patents and Trademarks, Washington, D.C. 20231, on 26 Feb 03
Date: 26 Feb 03 
Guy McClung, Reg. No. 29,008